

Paul W. Ahler  
Executive Director  
State Bar # 005379  
Arizona Prosecuting Attorneys' Advisory Council  
3001 W. Indian School Rd., Suite 307  
Phoenix, Arizona 85017

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	SUPREME COURT
	)	Case No.: R-09-0005
PETITION TO AMEND THE ARIZONA	)	
RULES OF CRIMINAL PROCEDURE	)	COMMENT TO PETITION TO AMEND
	)	RULE 4.1(b) RULES OF CRIMINAL
	)	PROCEDURE
	)	
	)	
	)	
	)	

The Arizona Prosecuting Attorneys' Advisory Council, APAAC, in response to the above-captioned petition, asks this Court to deny the petition to amend Rule 4.1(b) of the Arizona Rules of Criminal Procedure. The petition would require that when a person has been arrested without a warrant, the State must file a complaint within forty-eight clock hours after the initial appearance, removing the current exclusion for weekends and legal holidays. APAAC opposes the petition because its proposed changes would not protect either the interests of public safety or the rights of the accused, would impose undue burdens on the prosecution and the courts, and would result in inefficient prosecution. The proposed changes would also cause a substantial financial burden to the State and its agencies. Given the fact that the proposed changes are not constitutionally required, this proposal is simply not necessary. The following Memorandum supports APAAC's position.

1  
2 **MEMORANDUM IN OPPOSITION TO THE PETITION**

3 **1. Summary of the Proposed Rule Change**

4 The proposed rule change would require the State to file complaints against persons  
5 arrested without a warrant within forty-eight actual clock hours after the person's initial  
6 appearance before a magistrate. The petition notes that, under the current Rules of Criminal  
7 Procedure, due to the exclusion of weekends and holidays from the time computation of the  
8 forty-eight hour period to file complaints, some indigent defendants may be detained longer than  
9 others. The petition then reasons that equal protection considerations and indigent defendants'  
10 liberty interests require that all such defendants be released unless the State files a complaint  
11 within forty-eight clock hours after each such defendant's initial appearance.  
12

13 As it currently reads, Rule 4.1(a) of the Arizona Rules of Criminal Procedure states that a  
14 person arrested must be brought before a magistrate within 24 hours after arrest; if not, the  
15 person "shall immediately be released." Rule 4.1(b) now states:  
16

17 A person arrested without a warrant shall be taken before the nearest or most  
18 accessible magistrate in the county of arrest, whereupon a complaint, if one has  
19 not already been filed, shall promptly be prepared and filed. If a complaint is not  
20 filed within 48 hours from the time of the initial appearance before the magistrate,  
21 the defendant shall be released from jail, and the preliminary hearing date, if any,  
22 shall be vacated.

23 Rule 1.3(a) of the Arizona Rules of Criminal Procedure sets forth how time calculations  
24 are made under the Criminal Rules. Rule 1.3(a) excludes the day of the act or event and also  
25 excludes Saturdays, Sundays, and legal holidays:  
26

In computing any period of time of more than 24 hours prescribed by these rules,  
by order of court, or by an applicable statute, the day of the act or event from  
which the designated period of time begins to run is not to be included. The last  
day of the period so computed shall be included, unless it is a Saturday, Sunday or  
legal holiday, in which case the period shall run until the end of the next day  
which is neither a Saturday, Sunday nor a legal holiday. When the period of time  
prescribed or allowed is less than seven days, intermediate Saturdays, Sunday,

1 and legal holidays shall be excluded in the computation.

2 If granted, the petition would remove the computation of the time period for filing a  
3 complaint from the general time computation provisions of Rule 1.3(a), Ariz. R. Crim. P., by  
4 adding the language, "Notwithstanding [*sic*] Rule 1.3, the 48 hours shall run from the actual  
5 time of the initial appearance and include Saturday, Sunday and legal holidays."

## 6 **2. Arguments Opposing the Proposed Petition**

### 7 **A. The Constitution does not require that a complaint be filed within** 8 **forty-eight hours after arrest.**

9 The petition argues that, when a suspect is arrested without a warrant and taken into  
10 custody, a charging document must be filed within forty-eight hours of the initial appearance, or  
11 else the person must be released. However, this is not the case, because the United States  
12 Constitution requires only a *judicial determination of probable cause* within forty-eight hours of  
13 arrest.

14 The United States Supreme Court held in *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975),  
15 that "[T]he Fourth Amendment requires a judicial determination of probable cause as a  
16 prerequisite to extended restraint of liberty following arrest." Then, in *County of Riverside v.*  
17 *McLaughlin*, 500 U.S. 44, 56 (1991), the Court held that such a judicial determination of  
18 probable cause must be completed within forty-eight hours of arrest. The *Riverside* Court  
19 reasoned that, "On the one hand, States have a strong interest in protecting public safety by  
20 taking into custody those persons who are reasonably suspected of having engaged in criminal  
21 activity, even where there has been no opportunity for a prior judicial determination of probable  
22 cause." *Id.* at 52. "On the other hand, prolonged detention based on incorrect or unfounded  
23 suspicion may unjustly 'imperil [a] suspect's job, interrupt his source of income, and impair his  
24 family relationships.'" *Id.*, citing *Gerstein v. Pugh*, 420 U.S. 103, 112-114. The *Riverside* Court  
25 balanced these competing concerns by requiring a judicial determination of probable cause  
26 within forty-eight hours of arrest as a prerequisite to continued detention.

1 Under Arizona law, every pretrial detainee has an initial appearance within twenty-four  
2 hours after arrest. At that initial appearance, the magistrate makes a determination whether  
3 probable cause exists to detain the person on the matters on which the person is being detained,  
4 using forms known as release questionnaires or "Form Fours,". These are usually prepared by  
5 police officers. If the magistrate finds probable cause, the magistrate so notes on the pretrial  
6 documents, and the person may remain in detention. If the magistrate does not have sufficient  
7 information to support a finding of probable cause, the person is released as to that matter.  
8 Arizona law thus already requires a probable cause finding within twenty-four hours, faster than  
9 the United States Constitution requires. Therefore, the proposed amendment is not necessary and  
10 APAAC opposes the petition.

11 The petitioner also argues that equal protection requires the amendment. The petitioner  
12 provides only generalities on this issue, stating that the proposed amendment "results in equal  
13 treatment of all defendants held in custody pretrial, who are presumed innocent." (Petition at 3.)  
14 The petitioner fails to recognize the reality that the circumstances of every case are different. He  
15 has not cited any authority to support his theory that any variation in the amount of time  
16 defendants spend in custody constitutes a violation of equal protection, and no such support  
17 exists. Practically speaking, a defendant arrested at 9 p.m. may wait longer for his initial  
18 appearance than a defendant arrested at midnight, but this does not mean that the defendant  
19 arrested earlier has been denied the equal protection of the laws. The laws instead set time limits  
20 within which certain events must take place. Equal protection is not violated simply because  
21 some defendants have those events occur closer to the end of the allotted time periods and other  
22 defendants have those events occur closer to the beginning of those periods.  
23

24 In short, because the United States Constitution does not require the proposed  
25 amendments and Arizona law already provides shorter time limits than the Constitution requires,  
26 APAAC opposes the petition.

1           **B.     The proposed amended rule would be impossible to administer and**  
2           **would impose undue burdens on law enforcement and on the courts.**

3           The proposed amended rule states that the forty-eight hour period “shall run from the  
4 actual time of the initial appearance,” but it does not provide any mechanism for the courts or the  
5 parties to determine the exact time the initial appearance occurred and the resulting exact time by  
6 which the complaint would need to be filed. Without any such provisions, the proposed  
7 amendment would be impossible to administer. It would foster litigation to determine exactly  
8 when hearings were held and the moment at which a complaint was filed, and thus would tie up  
9 scarce judicial, prosecutorial, and defense resources that could better be spent dealing with the  
10 actual cases.

11           The current system provides an easily determined system for when complaints must be  
12 filed. Initial appearance court hearings are held 365 days a year. Rule 1.3(a) now states that,  
13 when a time period ends on a weekend or holiday, the time period “shall run until the end of the  
14 next day which is neither a Saturday, Sunday nor a legal holiday.” “The end of the day” logically  
15 means midnight, a time that is easily determined in all cases and that does not depend on what  
16 order the particular defendants appear before the magistrates. This system has been in effect for  
17 more than thirty years and has served Arizona’s criminal justice system well.

18           Further, the petition fails to take into account the realities that law enforcement agencies  
19 face after making an arrest. The police must complete their investigation, write the police  
20 reports, submit the police reports to prosecutors, and fill out the “Form Fours.” Under the  
21 proposed amendment, the already strict deadlines would be even more difficult to satisfy. Police  
22 officers, in their efforts to complete the necessary paperwork, may be unable to investigate other  
23 leads in a timely fashion, and defense counsel will seize on any error in the police reports to cast  
24 doubt on the officers’ professionalism and veracity.  
25  
26

1 The petition also states, “The time needed to draft and file the complaint is not excessive  
2 – an hour or two at the very most.” (Petition at 2.) The petition concludes that requiring  
3 prosecutors to work on weekends and holidays “may be administratively inconvenient, but it is  
4 outweighed by the liberty interests of the indigent defendants, who are entitled to release if the  
5 State does not file a complaint.” (*Id.* at 2-3.)  
6

7 The petitioner, a defense attorney, fundamentally misunderstands the realities under  
8 which prosecutors must work. The real issue is that prosecutors must take the time to complete  
9 their review of the police reports and make charging decisions. The executive branch has both  
10 the power and the duty to decide what, if any, criminal charges to file. As this Court stated over  
11 forty years ago, in the sound exercise of prosecutorial discretion, a prosecutor “must weigh the  
12 evidence, the law and the facts, and the chances of successful termination of the prosecution.”  
13 *State v. Stewart*, 103 Ariz. 457, 458, 445 P.2d 433, 434 (1968). Thus, the issue is not merely the  
14 time the prosecution needs to draft and file a complaint, but the prosecution’s obligation to read  
15 all of the police reports, research the law, staff the issue with other attorneys when necessary,  
16 and determine what, if any, charges to file. In addition, the prosecution has to redact victim  
17 information in police reports. See A.R.S. § 13-4434(B). This takes time, especially when  
18 multiple charges and multiple victims are involved. That is why this Court’s rules now allow the  
19 State a reasonable amount of time to file a complaint, and why the proposed amendment’s rigid  
20 forty-eight hour rule would be unreasonable. Therefore, APAAC opposes the petition and asks  
21 this Court to deny it.  
22

### 23 **3. Conclusion**

24 The current rules clearly state when the complaint must be filed. Excluding the time  
25 periods set forth in Rule 1.3, the State must file the complaint within forty-eight hours after the  
26

1 initial appearance before the magistrate. The proposed amendment would be impossible to  
2 administer; it would foster needless litigation; and it would impose unfair burdens on law  
3 enforcement agencies and on the prosecution. For all the reasons stated in this response, APAAC  
4 asks this Court to deny the petition to amend Rule 4.1(b), Ariz. R. Crim. P.  
5

6 Respectfully submitted this 14 of May, 2009.

7 

8 Paul W. Ahler  
9 Executive Director  
10 Arizona Prosecuting Attorneys' Advisory Council

11 Copies of the foregoing have  
12 been electronically filed  
13 this 14 day of May, 2009 with:

14 Arizona Supreme Court

15 Copies of the foregoing have been mailed  
16 This 14 day of May, 2009 to:

17 Gary Pearlmutter  
18 Coconino County Legal Defender  
110 East Cherry Avenue  
Flagstaff, Arizona 86001  
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22  
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